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CASE NO. 65,313

in the Supreme Court of the United States

OCTOBER TERM, 1984

TROPIGAS, S.A.,

Petitioner,

vs.

RICHARD ANDERSON et al.,

Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
REASONS WHY THE WRIT SHOULD BE DENIED	8
1. THE FACTS AS SHOWN BY THE RECORD BELOW DO NOT RAISE THE QUESTION PRESENTED IN THE PETITION BECAUSE TROPIGAS, S.A. IS A RESIDENT OF FLORIDA.	8
2. THE FACTS AS SHOWN BY THE RECORD BELOW DO NOT RAISE THE QUESTION PRESENTED BY THE PETITION BECAUSE THE FACTS ESTABLISH MORE THAN "MINIMUM CONTACTS."	10
CONCLUSION	15
CERTIFICATE OF SERVICE	16

TABLE OF CASES CITED

Page

Helicopteros Nacionales De Columbia, S. A. v. Hall,
104 S.Ct. 1868 (1984) 10, 11-12, 13-14

Hoffman v. Air India,
393 F.2d 507 (5th Cir. 1968), *cert. denied* 393
U.S. 924, 21 L.Ed.2d 260, 89 S.Ct. 255 (1969) . . 13

International Shoe Co. v. Washington,
326 U.S. 310 (1945) 10

Perkins v. Benguet Consolidated Mining Company,
342 U.S. 437 (1951) 13

Worldwide Volkswagen Corp. v. Woodson,
444 U.S. 286, 291 (1980) 9, 10, 11

OTHER AUTHORITIES CITED

Fla.R.App.P. 9.130(c) 3

Fla.R.App.P. 9.130(d) 3

Fla.R.App.P. 9.220 3

§ 48.081(5) Fla.Stat. 13

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The respondents, Richard Anderson, Percival Anderson, Melva Anderson, Trevor Anderson and Sharon Anderson, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the opinion of the Third District Court of Appeal of Florida in this case. That opinion is reported at 447 So.2d 338.

STATEMENT OF THE CASE

This petition for certiorari arises out of a personal injury action in which respondents, the Andersons, are seeking compensation for the serious injuries they received in a liquid propane gas explosion caused by a defective lpg cylinder and/or valve provided to them by petitioner, Tropigas, S.A. The Andersons are Jamaican citizens, and the explosion occurred in Jamaica. However, because the Andersons were so severely burned, they were required to seek medical attention in the United States and now reside in Dade County, Florida. (A.A. 469, 470).

The Andersons filed this suit in Dade County against Tropigas International Corporation (not a party to this petition) and its wholly owned subsidiary, Tropigas, S. A. Tropigas, S.A. moved to dismiss for lack of personal jurisdiction. In response to this motion, the Andersons took 22 depositions of the officers and personnel of Tropigas, S.A., who are located in Coral Gables, Dade County, Florida, in order to ascertain the true jurisdictional facts of this cause. Based on these depositions, the Andersons argued that Tropigas, S.A. actually has its principal place of business in Dade County and therefore it is subject to suit there, no matter where the cause of action arose. The trial court accepted respondents' position and denied the motion to dismiss. This ruling was affirmed upon appeal. The Florida Supreme Court refused to accept jurisdiction.

The evidence which supports the finding that Tropigas, S.A. has its principal place of business in Coral Gables shows, among other things, the following:

1. Tropigas, S.A.'s Chairman of the Board, President, Treasurer, Secretary and Comptroller are located in Coral Gables. All of these corporate officers work out of offices at 1701 Ponce de Leon Boulevard. (A.A. 15, 41-41A, 68, 70, 146-147, 178, 212-214)[1] 1701 Ponce was also the site of Board of Directors' meetings of Tropigas, S.A., at all times material. (A.A. 18, 104, 150).

2. 1701 Ponce de Leon Boulevard is listed as the principal office in a form filed by Tropigas, S.A., in Puerto Rico. (A.A. 13). It is also listed as the corporate headquarters of Tropigas, S.A., in its parent's 10K filing with the SEC. (A.A. 5).

3. The day to day operations of the different offshore divisions are run by local managers who are hired and fired by the President of Tropigas, S.A. in Coral Gables. (A.A. 97, 158-159, 174, 382-383).

4. These local managers are subject to limitations as to how much money they can spend before approval from the President at 1701 Ponce is required. (A.A. 121-122, 374-378).

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[1]"A.A" refers to Appellees' Appendix which was the appendix supplied by respondents to the Third District Court of Appeal of Florida. Florida Rule of Appellate Procedure 9.130(d) states that in proceedings to review non-final orders, such as the one issued here, "a record shall not be transmitted to the court." Rather, the parties provide appendices which contain those portions of the record deemed necessary to an understanding of the issues presented. Fla.R.App.P. 9.130(c) and 9.220. Unless otherwise indicated, all emphasis is supplied.

5. Supplies are purchased in the United States and Florida out of 1701 Ponce for Tropigas, S.A.'s offshore operations. (A.A. 27, 30, 119-120, 390-391). At times it is represented to some suppliers that Tropigas, S.A. is an American company with a Coral Gables address. This is done so that the suppliers will deal with and ship to Tropigas, S.A. (A.A. 388). Purchase orders of Tropigas, S.A. have the Coral Gables address printed on them and the "main office" copy of these purchase orders is sent to 1701 Ponce and retained there. (A.A. 389, 396, 410).

6. Tropigas, S.A., maintains a checking account and a Nassau Eurodollar account at Southeast First National Bank of Miami. There are no other accounts for all of Tropigas, S.A. anywhere else. Each division has its own local bank account which is also overseen by the personnel at 1701 Ponce. (A.A. 21, 288-290, 291, 298).

7. The statements of the Southeast account are sent to 1701 Ponce. (A.A. 33, 275-276, 282-283, 299). The signatories on these accounts are located at 1701 Ponce. (A.A. 33, 255-256, 339). Mr. Finley, the Assistant Comptroller for Tropigas, S.A., is located at 1701 Ponce and solely handles the transfer of funds into and out of Tropigas, S.A.'s investment account. (A.A. 273, 286, 289-293, 310).

8. Profits from the different Tropigas, S.A. divisions are sent by check or wire transfer to the accounts at Southeast. (A.A. 26, 84, 248, 293, 306-307, 343). The money in the checking

account is then used to pay for goods purchased for Tropigas, S.A. and to pay Tropigas International Corp. the administrative fees and dividends owed it by Tropigas, S.A. (A.A. 27, 249-251, 252, 271, 294).

9. Financial statements of the different offshore divisions are consolidated at 1701 Ponce and are reviewed there by Tropigas, S.A.'s officers. (A.A. 24, 51, 65-66, 76-77, 101-102, 176, 188, 348). Copies of the general ledgers of all the divisions are maintained at 1701 Ponce. (A.A. 217-218).

10. Major capital acquisitions and sales by the divisions must be approved by the President and Board of Directors of Tropigas, S.A. (A.A. 104, 127-139, 163-164, 184-185). The decision of what dividend the corporation will pay is also made at 1701 Ponce. (A.A. 155).

11. Contracts for Tropigas, S.A. are negotiated from 1701 Ponce. Some of these contracts involve the acquisition of valves and cylinders. (A.A. 31, 54, 75, 117-118, 393). Purchase orders are reviewed at 1701 Ponce for technical accuracy. This includes orders which originate in the various offshore divisions. (A.A. 397, 402, 418-422, 424-426). Also, record keeping policies are instituted through the 1701 Ponce office for all of the divisions. If the divisions don't comply with these policies, the President of Tropigas, S.A. gets involved. (A.A. 47-48, 79-80, 81-82).

12. Tropigas, S.A. maintains both a street address and a post office box in Coral Gables. (A.A. 389, 409, 410).

13. The only engineers employed to give technical advice to all divisions of Tropigas, S.A. are located at 1701 Ponce. (A.A. 414, 429-430, 433, 438-439, 445-446). These engineers do quality control in the different divisions. (A.A. 442-443). They must also give their approval before an offshore division can purchase a new type of valve or other equipment. (A.A. 113, 398-399, 415-417).

14. The President of Tropigas, S.A. and the local managers consult with these engineers at 1701 Ponce. The managers also travel to 1701 Ponce to consult with the President at his office. (A.A. 61-62, 423, 445-446, 448, 458, 460). Yearly profit plan reviews were conducted annually at 1701 Ponce to set operational goals for each of the offshore divisions. These goals include amount and type of sales expected to be made, expenses incurred, expansion expected, etc. (A.A. 87, 124-127, 203-204, 355). If, during the year, a division did not meet its profit plan, the President of Tropigas, S.A. would review that division. He also establishes incentive programs for the managers to encourage them to meet their profit plans and he is the one who gives them raises. (A.A. 176, 208-209, 315).

15. No one outside of Florida has any authority over more than one local operation. The Puerto

Rico office does negotiate supply contracts for some of the divisions, but not all of them. (A.A. 38-39, 189-191, 215-216). The local managers report to the President of Tropigas, S.A. at 1701 Ponce—he is their boss, the one who must approve or disapprove their decisions. He establishes the corporate policy regarding their duties and responsibilities and directs the operation of the company. (A.A. 41B-44, 49-50, 71-72, 86, 105, 142-144, 171-172, 181, 206-207). He is responsible for safety at all of the offshore divisions. (A.A. 56-60. 91-95).

16. When Rodezno was hired as manager of offshore retail operations, Bullen, the President of Tropigas, S.A., sent a telex from 1701 Ponce to all the Caribbean and Central American divisions stating:

> I am pleased to advise you that effective from August 9, 1982 R. Roberto Rodezno has joined the Tropigas Miami Staff as Manager-Latin American Retail Operations. In this position, Mr. Rodezno will have direct responsibility for the Tropigas Central America Merchandise operations and will support me in the management of the operations. Roberto's background and experience is such that he will provide added strength to the Tropigas Miami Staff and strong support to each of you. I am sure I can count on you to give Roberto your full support in his new position. (A.A. 106).

Not only is Tropigas, S.A.'s home office located in Dade County, as shown by the above evidence, but there is also considerable activity carried on there that relates to the accident involved in this cause: valves are tested, approved for purchase and purchased through the Coral Gables office; cylinders are purchased and repaired through the Coral Gables office; and the President of Tropigas, S.A., who is located in Coral Gables is responsible for safety in all of the offshore divisions. (A.A. 52, 83, 91-95, 160, 392, 415-417, 440-441). The evidence available on these points is somewhat limited due to the position taken by Tropigas, S.A. below that discovery should relate solely to facts relevant to the jurisdiction and forum non conveniens questions.

REASONS WHY THE WRIT SHOULD BE DENIED

1.

THE FACTS AS SHOWN BY THE RECORD BELOW DO NOT RAISE THE QUESTION PRESENTED IN THE PETITION BECAUSE TROPIGAS, S.A. IS A RESIDENT OF FLORIDA.

The sole question presented in the petition is:

Whether it is a violation of the 14th Amendment for a Florida court to assert *in personam* jurisdiction over a non-resident Panamanian corporation in personal injury litigation arising from an accident which occurred in Jamaica, West Indies, where the alien corporate defendant does not do business in Florida and the plaintiffs

were residents and citizens of Jamaica at the time of the accident. (Brief of Petitioner, p.i).

But the facts of the record do not support this question. Rather the facts show that Tropigas, S.A. is a resident of Dade County, Florida.

The officers of Tropigas, S.A. are located in Florida. Those officers hire and fire the local managers of each division, approve expenditures by the local managers, review the financial statements of all the off-shore divisions, maintain the only bank accounts that exist for all of Tropigas, S.A., oversee the bank accounts of each division, determine what dividend the corporation will pay, review the divisions' yearly profit plans, establish incentive programs for the local managers, and give the managers raises. These officers are the only people in Tropigas, S.A. who have control over more than one local operation of the company. Clearly, these facts and the others cited in the Statement of the Case show that the home office—principal place of business of Tropigas, S.A. is in Florida.

A corporation is deemed to be a resident of the state where it is incorporated and the state where it has its principal place of business. Since Tropigas, S.A. has its home office—principal place of business in Florida, it is treated as a Florida resident. Therefore due process considerations never come into play for "the due process clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a *non-resident* defendant" only. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

2.

THE FACTS AS SHOWN BY THE RECORD BELOW DO NOT RAISE THE QUESTION PRESENTED BY THE PETITION BECAUSE THE FACTS ESTABLISH MORE THAN "MINIMUM CONTACTS."

It seems pointless to argue minimum contacts where the defendant is a resident of the forum state. However, in an abundance of caution, respondents point out that even if Tropigas, S.A. were not a resident of Florida, the facts as shown above establish that Tropigas, S.A. has more than those certain minimum contacts with Florida such that maintenance of the suit in this state does not offend traditional notions of fair play and substantial justice.

That this is true is best illustrated by comparing this cause with the facts as shown in the cases relied on by appellant to create conflict, *Helicopteros Nacionales De Columbia, S.A. v. Hall*, 104 S.Ct. 1868 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

In *International Shoe*, this Court held that a corporation's use of salesmen residing in Washington to solicit orders for merchandise from Washington customers which resulted in a substantial volume of merchandise being shipped to those customers was sufficient to support Washington's assertion of *in personam* jurisdiction over the corporation.

In *World-Wide Volkswagen*, the jurisdictional facts were as follows:

> Petitioners [a retailer and wholesale regional distributor which were incorporated and had their places of business in New York] *carry on no activity whatsoever in Oklahoma.* They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, *respondents seek to base jurisdiction on one, isolated occurrence* and whatever inferences can be drawn therefrom: the *fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.*

444 U.S. at 295. Based on these facts, this Court held that it would be a denial of due process for the courts of Oklahoma to exercise *in personam* jurisdiction over the petitioners.

In *Helicopteros*, the petitioner was a Columbian corporation with its principal place of business in Bogota, Columbia. It never had an agent for the service of process within Texas; it never performed helicopter operations in the state or sold any product that reached

the state; it never solicited business in Texas, never signed any contract in Texas, never had any employee based there and never recruited an employee in Texas. It never maintained an office or establishment or records there and had no stockholders located there. As this Court stated:

> Basically, Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training.

104 S.Ct. at 1873. Based on these facts, this court held that "Helicol's contacts were insufficient to satisfy the requirements of the Due Process clause of the Fourteenth Amendment." 104 S.Ct. 1874.

In the cause at bar, however, Tropigas, S.A.'s officers are located in Florida as are the general ledgers of all its divisions. It also maintains a checking account and Nassau Eurodollar account at Southeast First National Bank of Miami. The officers located in Florida hire the local managers of each division and conduct other business of Tropigas, S.A. in this state. At the very least, these activities can be described as an overseeing of all of the Tropigas, S.A.'s divisions from this state. Further, Tropigas, S.A.'s only stockholder, Tropigas International Corporation, is located in this state.

Finally, service was effected on Tropigas, S.A. by personal service on an officer of the corporation resident in the state, pursuant to §48.081(5), Fla. Stat. which states:

> Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.[2]

The opinion of the Third District Court of Appeal specifically cited to this statutory provision in affirming the trial court's holding. Clearly, these facts are sufficient to establish those contacts necessary to support an exercise of *in personam* jurisdiction by the courts of Florida.

In fact, this cause is very similar to *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1951). The facts of *Perkins* were described by this Court in *Helicopteros*, 104 S.Ct. at 1872, as follows:

> In *Perkins*, the Court addressed a situation in which state courts had asserted general

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[2]This statute has been found valid under the due process clause of the Fourteenth Amendment. *Hoffman v. Air India*, 393 F.2d 507 (5th Cir. 1968) cert. denied, 393 U.S. 924, 21 L.Ed.2d 260, 89 S.Ct. 255 (1969).

> jurisdiction over a defendant foreign corporation. During the Japanese occupation of the Philippine Islands, the president and general manager of a Philippine mining corporation maintained an office in Ohio from which he conducted activities on behalf of the company. He kept company files and held directors' meetings in the office, carried on correspondence relating to the business, distributed salary checks drawn on two active Ohio bank accounts, engaged an Ohio bank to act as transfer agent, and supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines. In short, the foreign corporation, through its president, "ha[d] been carrying on in Ohio a continuous and systematic but limited, part of its general business," and the exercise of general jurisdiction over the Philippine corporation by an Ohio court was "reasonable and just." 342 U.S., at 438, 445, 72 S.Ct., at 414, 418.

Just as in *Perkins*, Tropigas, S.A. is carrying on a continuous and systematic, if limited, part of its general business in Florida. Therefore, exercise of general jurisdiction over Tropigas, S.A. by the Florida court is reasonable and just and does not violate the due process clause of the Fourteenth Amendment.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondents Brief in Opposition was mailed this 19th day of September, 1984, to: CHRISTIAN D. KEEDY, P. A., Counsel for Petitioner, 1301 Alfred I. duPont Building, 169 East Flagler Street, Miami, Florida 33131; ROBERT J. BLACK, ESQ., 420 South Dixie Highway, Coral Gables, Florida 33146; and DEBRA L. BRADY, ESQ., 1301 Alfred I. duPont Building, 169 East Flagler Street, Miami, Florida 33131. All parties required to be served have been served.

PATRICE A. TALISMAN